



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

09/120970

APPLICATION NUMBER	FILED DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/120,970	07/22/98	CURTISS	MEGAN-100CON

HM22/1001

PATREA L PABST  
ARNALL GOLDEN & GREGORY  
2800 ONE ATLANTIC CENTER  
1201 W PEACHTREE STREET  
ATLANTA GA 30309-3450

EXAMINER

RYAN, V

ART UNIT PAPER NUMBER

1641

3

DATE MAILED: 10/01/99

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on Preliminary Amendment 7/22/98

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 (one) month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-35 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claim(s) 1-35 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

Art Unit: 1641

## DETAILED ACTION

### *Election/Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-29, drawn to an isolated microbial cell, classified in class 435, subclass 252.3.
- II. Claims 30-35, drawn to a method of vaccination, classified in class 424, subclass 200.1.

The inventions are distinct, each from the other because of the following reasons: Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the product can be used in a diagnostic assay, in a process for selective insecticidal treatment, or in a process for evaluating environmental contamination with pollutants.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of

Art Unit: 1641

their recognized divergent subject matter, and different classification, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species A: claims 5 and 6 directed to a cell having a regulatory gene down regulating the lethal gene in a permissive environment.

Species B: claims 5 and 7 directed to a cell having a regulatory gene up regulating the lethal gene in a non-permissive environment.

Species C: claims 13 and 14 directed to a cell having a regulatory gene down regulating the essential gene in a non-permissive environment.

Species D: claims 13 and 15 directed to a cell having a regulatory gene up regulating the essential gene in a permissive environment.

Species E: claims 16, 17 and 18 directed to a cell having a regulatory gene down regulating the replicative gene in a non-permissive environment.

Art Unit: 1641

Species F: claims 16, 17 and 19 directed to a cell having a regulatory gene up regulating the replicative gene in a permissive environment.

Species G: claims 20-22 and 24-26 directed to a cell having an antigen expression gene.

These species are patentably distinct each from the other as each is clearly structurally and functionally different, requiring a divergent literature and patent search.

If applicant elects invention I, then applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-4, 8-12, 20, 23 and 27-29 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which

Art Unit: 1641

are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must

Art Unit: 1641

be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 35 CFR 1.17(i).

The Group and/or Art Unit location of your application in the Patent and Trademark Office may have changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1641.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V. Ryan whose telephone number is (703)305-6558.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0196.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027.

Papers related to this application may be submitted to the Group 1600 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette,

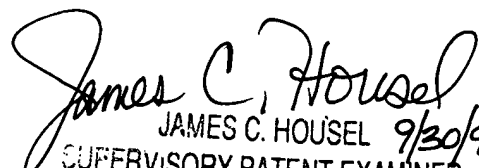
Application/Control Number: 09/120,970

Page 7

Art Unit: 1641

1096 OG 30 (November 15, 1989). The fax number for Art Unit 1641 is (703) 308-4242.

V. Ryan  
Patent Examiner/Art Unit 1641  
September 1999  
Ryan/vr

  
JAMES C. HOUSEL 9/30/99  
SUPERVISORY PATENT EXAMINER